### SENATE BILL No. 540

#### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-11-5-7; IC 35-33-8.

Synopsis: Bail procedure and pretrial release. Provides that if: (1) a defendant executes a bail bond by depositing cash or securities with the clerk of a court in an amount not less than 10% of the bail; and (2) the defendant fails to appear before the court as ordered, the court must order the remainder of the deposit, after certain civil judgments and fees have been paid, and the bond transferred to the county in which the court has jurisdiction. Requires the deposit and bond to be deposited in the county general fund of the county. Specifies that money deposited in the county general fund may only be used to: (1) operate pretrial release programs; and (2) assist a sheriff in returning persons to custody who have failed to appear before a court as ordered (Continued next page)

Effective: July 1, 1999.

# Riegsecker

January 20, 1999, read first time and referred to Committee on Judiciary.



while participating in pretrial release programs. (Current law requires the deposit and the bond to be forfeited and deposited in the common school fund as provided in the Constitution of the State of Indiana.)





#### Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## **SENATE BILL No. 540**

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 5-11-5-7 IS AMENDED TO READ AS FOLLOWS
2	[EFFECTIVE JULY 1, 1999]: Sec. 7. (a) The state board of accounts
3	or a person designated in writing by it may collect any of the following:
4	(1) Unpaid fines, costs, or fees that are imposed for violations of

- (1) Unpaid fines, costs, or fees that are imposed for violations of statutes defining a crime or infraction and are owed to the state or its political subdivisions.
- (2) Money owed resulting from bond forfeitures under IC 35-33-8-7.
- (3) (2) Unpaid user's fees incurred under a pretrial diversion agreement by a person charged with a misdemeanor, infraction, or ordinance violation.
- (b) The state board of accounts or its agent may compromise the amount of money owed in collecting money under this section.
- (c) The costs of collection, including but not limited to reasonable attorney's fees, may be added to money that is owed and collected



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1	under this section. However, the costs of collection may not exceed an
2	amount that is equal to the amount of money that is owed.
3	(d) When money is collected under this section, the state board of
4	accounts or its agent shall deposit the money, less the costs of
5	collection, in accounts to the credit of the state or a political
6	subdivision as required by law.
7	(e) The costs of collecting money under this section shall be
8	determined by the state board of accounts and shall be paid from
9	money collected.
10	SECTION 2. IC 35-33-8-3.2 IS AMENDED TO READ AS
11	FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) A court may
12	admit a defendant to bail and impose any of the following conditions
13	to assure the defendant's appearance at any stage of the legal
14	proceedings, or, upon a showing of clear and convincing evidence that
15	the defendant poses a risk of physical danger to another person or the
16	community, to assure the public's physical safety:
17	(1) Require the defendant to:
18	(A) execute a bail bond with sufficient solvent sureties;
19	(B) deposit cash or securities in an amount equal to the bail;
20	(C) execute a bond secured by real estate in the county, where
21	thirty-three hundredths (0.33) of the true tax value less
22	encumbrances is at least equal to the amount of the bail; or
23	(D) post a real estate bond.
24	The defendant must also pay the fee required by subsection (d).
25	(2) Require the defendant to execute a bail bond by depositing
26	cash or securities with the clerk of the court in an amount not less
27	than ten percent (10%) of the bail. If the defendant is convicted,
28	the court may retain all or a part of the cash or securities to pay
29	fines, costs, fees, and restitution, if ordered by the court. A portion
30	of the deposit, not to exceed ten percent (10%) of the monetary
31	value of the deposit or fifty dollars (\$50), whichever is the lesser
32	amount, may be retained as an administrative fee. The clerk shall
33	also retain from the deposit under this subdivision the following:
34	(A) The fee required by subsection (d).
35	(B) Fines, costs, fees, and restitution as ordered by the court.
36	(C) Publicly paid costs of representation that shall be disposed
37	of in accordance with subsection (b).
38	(D) In the event of the posting of a real estate bond, the bond
39	shall be used only to insure the presence of the defendant at
40	any stage of the legal proceedings, but shall not be foreclosed
41	for the payment of fines, costs, fees, or restitution.
42	The individual posting bail for the defendant or the defendant



1	admitted to bail under this subdivision must be notified by the
2	sheriff, court, or clerk that the defendant's deposit may be
3	forfeited transferred to the county in which the court has
4	<b>jurisdiction</b> under section 7 of this chapter or retained under
5	subsection (b).
6	(3) Impose reasonable restrictions on the activities, movements,
7	associations, and residence of the defendant during the period of
8	release.
9	(4) Require the defendant to refrain from any direct or indirect
10	contact with an individual.
11	(5) Place the defendant under the reasonable supervision of a
12	probation officer or other appropriate public official.
13	(6) Release the defendant into the care of a qualified person or
14	organization responsible for supervising the defendant and
15	assisting the defendant in appearing in court. The supervisor shall
16	maintain reasonable contact with the defendant in order to assist
17	the defendant in making arrangements to appear in court and,
18	where appropriate, shall accompany the defendant to court. The
19	supervisor need not be financially responsible for the defendant.
20	(7) Release the defendant on personal recognizance unless:
21	(A) the state presents evidence relevant to a risk by the
22	defendant:
23	(i) of nonappearance; or
24	(ii) to the physical safety of the public; and
25	(B) the court finds by a preponderance of the evidence that the
26	risk exists.
27	(8) Impose any other reasonable restrictions designed to assure
28	the defendant's presence in court or the physical safety of another
29	person or the community.
30	(b) Within thirty (30) days after disposition of the charges against
31	the defendant, the court that admitted the defendant to bail shall order
32	the clerk to remit the amount of the deposit remaining under subsection
33	(a)(2) to the defendant. The portion of the deposit that is not remitted
34	to the defendant shall be deposited by the clerk in the supplemental
35	public defender services fund established under IC 33-9-11.5.
36	(c) For purposes of subsection (b), "disposition" occurs when the
37	indictment or information is dismissed, or the defendant is acquitted or
38	convicted of the charges.
39	(d) Except as provided by subsection (e), the clerk of the court shall:
40	(1) collect a fee of five dollars (\$5) for each bond or deposit under
41	subsection (a)(1); and
12	(2) retain a fee of five dollars (\$5) from each denosit under



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1	subsection (a)(2).
2	The clerk of the court shall semiannually remit these fees to the board
3	of trustees of the public employees' retirement fund for deposit into the
4	special death benefit fund. The fee required by subdivision (2) is in
5	addition to the administrative fee retained under subsection (a)(2). This
6	subsection expires December 31, 1998.
7	(e) With the approval of the clerk of the court, the county sheriff
8	may collect the bail and fees required by subsection (d). The county
9	sheriff shall remit the bail to the clerk of the court by the following
10	business day and remit monthly the five dollar (\$5) special death
11	benefit fee to the county auditor.
12	(f) When a court imposes a condition of bail described in subsection
13	(a)(4):
14	(1) the clerk of the court shall comply with IC 5-2-9; and
15	(2) the prosecuting attorney shall file a confidential form
16	prescribed or approved by the division of state court
17	administration with the clerk.
18	SECTION 3. IC 35-33-8-7 IS AMENDED TO READ AS
19	FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) If a defendant:
20	(1) was admitted to bail under section 3.2(a)(2) of this chapter;
21	and
22	(2) has failed to appear before the court as ordered;
23	the court shall issue a warrant for the defendant's arrest.
24	(b) In a criminal case, if the court having jurisdiction over the
25	criminal case receives written notice of a pending civil action or
26	unsatisfied judgment against the criminal defendant arising out of the
27	same transaction or occurrence forming the basis of the criminal case,
28	funds deposited with the clerk of the court under section 3.2(a)(2) of
29	this chapter may not be declared forfeited or transferred to the
30	<b>county</b> by the court, and the court shall order the deposited funds to be
31	held by the clerk. If there is an entry of final judgment in favor of the
32	plaintiff in the civil action, and if the deposit and the bond are subject
33	to forfeiture, transfer, the criminal court shall order payment of all or
34	any part of the deposit to the plaintiff in the action, as is necessary to
35	satisfy the judgment. The court shall then order the remainder of the
36	deposit, if any, and the bond forfeited. transferred to the county in
37	which the court has jurisdiction.
38	(c) Any proceedings concerning the bond, or its forfeiture, transfer,
39	judgment, or execution of judgment, shall be held in the court that
40	admitted the defendant to bail.
41	(d) After a bond has been forfeited transferred to the county under
42	subsection (b), the clerk shall mail notice of forfeiture the transfer to



1	the defendant. In addition, unless the court finds that there was
2	justification for the defendant's failure to appear, the court shall
3	immediately enter judgment, without pleadings and without change of
4	judge or change of venue, against the defendant for the amount of the
5	bail bond, and the clerk shall record the judgment.
6	(e) If a bond is forfeited transferred and the court has entered a
7	judgment under subsection (d), the clerk shall transfer to deposit in the
8	state common school county general fund of the county in which the
9	court has jurisdiction:
10	(1) any amount remaining on deposit with the court (less the fees
11	retained by the clerk); and
12	(2) any amount collected in satisfaction of the judgment.
13	Money deposited in a county general fund under this subsection
14	may only be used to operate pretrial release programs and assist
15	the sheriff of the county in returning persons to custody who have
16	failed to appear before a court as ordered while participating in
17	pretrial release programs.
18	(f) The clerk shall return a deposit, less the administrative fee, made
19	under section 3.2(a)(2) of this chapter to the defendant, if the defendant
20	appeared at trial and the other critical stages of the legal proceedings.
21	SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS
22	FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) If a defendant
23	was admitted to bail under section 3.2(a) of this chapter and the
24	defendant has knowingly and intentionally failed to appear before the
25	court as ordered, the court:
26	(1) shall issue a warrant for the defendant's arrest;
27	(2) may not release the defendant on personal recognizance; and
28	(3) may not set bail for the rearrest of the defendant on the
29	warrant at an amount that is less than the greater of:
30	(A) the amount of the original bail; or
31	(B) two thousand five hundred dollars (\$2,500);
32	in the form of a bond issued by an entity defined in IC 27-10-1-7
33	or the full amount of the bond in cash.
34	(b) In a criminal case, if the court having jurisdiction over the
35	criminal case receives written notice of a pending civil action or
36	unsatisfied judgment against the criminal defendant arising out of the
37	same transaction or occurrence forming the basis of the criminal case,
38	funds deposited with the clerk of the court under section 3.2(a)(2) of
39	this chapter may not be declared forfeited or transferred to the
40	<b>county</b> by the court, and the court shall order the deposited funds to be
41	held by the clerk. If there is an entry of final judgment in favor of the

plaintiff in the civil action, and if the deposit is subject to forfeiture,



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- 1 **transfer**, the criminal court shall order payment of all or any part of the
- deposit to the plaintiff in the action, as is necessary to satisfy the
- 3 judgment. The court shall then order the remainder of the deposit, if
- 4 any, forfeited: transferred to the county for deposit in the county
- 5 general fund as provided in section 7 of this chapter.



